IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13..12..2006

CORAM

THE HONOURABLE MR.A.P. SHAH, CHIEF JUSTICE
and
THE HONOURABLE MR. JUSTICE K. CHANDRU

W.P.NO.47861 OF 2006
and
MP.No.1 OF 2006

T. Loganathan
Inspector of Police,
G-3 Kilpauk Police Station,
Kilpauk, Chennai 10. .. Petitioner

Vs.

1. State Human Rights Commission
Tamil Nadu, rep. by its Chairman,
Chennai.

2. A. Bakkialakshmi
W/o.R. Shanmugam .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari to call for the records in the impugned proceedings of the first respondent in SHRC.No.4325/2005 dated 7.9.2006 and quash the same.

For Petitioner : Mr. A. Prabhakaran

O R D E R

(Order of the Court was made by K. CHANDRU, J.)

This writ petition is a classic case of a member of the Uniformed Services (the petitioner herein), at the behest of certain vested interests had caused grievous injury to a journalist and later, hauled up before the State Human Rights Commission [for short, 'SHRC']. The SHRC, after a proper trial, found the charges proved and ordered a compensation of Rs.25,000/- to be paid to the journalist (the husband of the second respondent herein), whose human rights were blatantly abused at the hands of the writ petitioner.

2. Little the writ petitioner realised that his duty was to protect the freedom of human beings of this country and not to act as a private agent of certain vested interests. In the name of discharging his

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duties, he has completely forgotten the constitutional values, which were evolved over the years in our war struggle against colonialism. The long way that we took to achieve our freedom was beautifully expressed by James Weldon Johnson, a black bard, who himself was a freedom fighter, in the following poem written by him:-

"Stony the road we trod
Bitter the chastening rod
Felt in the days
When hope unborn had died. (Yes)

Yet with a steady beat,
Have not our weary feet
Come to the place
For which our fathers sighed ?

We have come over a way
That with tears has been watered. (Well)
We have come treading our paths
Through the blood of the slaughtered.

Out from the gloomy past,
Till now we stand at last (Yes)
Where the bright gleam
Of our bright star is cast."

3. The facts leading to the present writ petition are summarised as follows:-

The second respondent's husband Shanmugam was an Editor and publisher of a Tamil monthly called 'Kannottam'. He was running that magazine for the last five years and he had a standing as a journalist for over 15 years. The magazine, which was confined to the local area (i.e., Vaniyambadi, Ambur and Thiruppur), by its various reports, brought anger of several persons, who took a disliking towards him and his magazine. He was also associated with one other person by name, Rajkumar, who was a reporter to the said magazine.

4. On 24.6.2005, Editor Shanmugam was contacted by the Reporter Rajkumar over phone and he requested him to come to Vaniyambadi Police Station where he saw a small crowd in which he found the writ petitioner (Inspector of Police in that Station) with one Balu, father of 9 years old girl studying in a local school at Vaniyambadi and the Headmaster and the Drill Master of the School were also present. Another person by name, Mohammed Nabil was also present there. When Editor Shanmugam sought permission to take photographs of the accused, who was alleged to have raped the minor girl, permission was refused by the Police. However, the news item regarding the rape of the minor girl was found in the magazine run by the second respondent's husband (Editor Shanmugam). This

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infuriated the writ petitioner Inspector of Police. The substance of publication which infuriated the writ petitioner was that he had taken bribe and converted the rape case into a petty offence which made the accused to pay a fine of only Rs.300/- and thereby the main culprit was hidden from being brought to book.

5. Angered by this incident, a criminal case was filed against the Editor and the Reporter of the Magazine. By pretending to investigate into the said offence, the said Editor Shanmugam was arrested on a Saturday night and First Information Report was recorded as if he was arrested only on Sunday. He was brutally attacked in the lock up and was produced before the Magistrate with the grievous injuries suffered by him. Only on the orders of the Magistrate, he was admitted to the Hospital. The fact that he was attacked in the Police Station was also informed to the Medical Officer in charge of the Hospital, who has also given a proper Medical Certificate regarding the injuries suffered by him and though the Police threatened the Medical Officer and when the Medical Officer refused to concede to his request, Editor Shanmugam was taken to Vellore and admitted to the Vellore Medical College Hospital and kept there without proper medical care. This was inspite of the fact that he showed his identity that he was a journalist. The writ petitioner did not show any respect for law and disregarded the guidelines given in D.K.Basu's case. This resulted in the second respondent sending a complaint to the first respondent SHRC, which took it on file as complaint in S.H.R.C. No.4325 of 2005. The reporter Rajkumar's complaint was taken on file as S.H.R.C. No.7340 of 2005. There was also yet another complaint filed on behalf of the Tamil Nadu Journalists' Association by its President D.S.Ravindra Doss as complaint S.H.R.C. No.4551 of 2005.

6. All the complaints were heard together and after notice to the petitioner and after examining the witnesses, the first respondent SHRC came to the conclusion that the injury suffered by Editor Shanmugam was grievous in nature, which was supported by medical evidence and also by the evidence of the Assistant Jailor, Central Prison, Vellore. The SHRC categorically recorded the following findings in its order:-

> "... From the evidence available on record, it is clear that those injuries were sustained by Shanmugam in the hands of R1 Loganathan, Inspector of Police, Vaniyambadi Police Station. The suggestion of the defence that he could have sustained the injuries elsewhere cannot be accepted in the circumstances of the case."
> ....
> ....
> .....
> "While considering the evidence available on record, it is clear that R1 Loganathan, Inspector of Police, Vaniyambadi Police Station, has committed human rights violation and is liable for the same."

After holding the writ petitioner guilty of inflicting injuries on the

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Editor Shanmugam, the SHRC recommended that for the human rights violation committed by him, he is liable to pay compensation of Rs.25,000/- to Editor Shanmugam in the case relating to complaint in S.H.R.C.No. 4325 of 2005 filed by the second respondent herein. The other complaints, viz., S.H.R.C. Nos.7340 of 2005 and 4551 of 2005, were closed. It is against this order, the present writ petition has been filed.

7. Even in this 21st century, such things take place in the portals of a Police Station by the men belonging to the Uniformed Services only shows the degradation of the standard of the human rights in our country. The fact that it has been done to a journalist that too, by men belonged to the Police force, we are reminded by the writings of R.G.Ingersoll in his book "The Liberty of Man and other Essays [Rupa & Co., New Delhi Paperback Edition 2003].

> "Degradation has been thoroughly tried, with its meanings and brandings, and the result was that those who inflicted the punishments became as degraded as their victims.
> ....
> ....
> .....
> Crimes were committed to punish crimes, and crimes were committed to prevent crimes. The world has been filled with prisons and dungeons, with chains and whips, with crosses and gibbets, with thumb-screws and racks, with hangmen and headsmen - and yet these frightful means and instrumentalities and crimes have accomplished little for the preservation of property or life. It is safe to say that Governments have committed far more crimes than they have prevented."

8. We have heard the arguments of Mr.A. Prabhakaran, learned counsel appearing for the writ petitioner and have perused the records.

9. We do not find there is any merit in the contentions raised by the learned counsel appearing for the petitioner and if such a contention is accepted, it will destroy the very creation of the Human Rights Commission itself created under an Act of Parliament.

> 'Sed quis cusiodiet ipsos custodes?'
> Who shall guard the guards themselves?

If today one wants a ready answer, it is certainly the Human Rights Commissions established under the 1993 Act of Parliament.

10. In a recent lecture delivered to the Human Rights functionaries in a function organised by Madhya Pradesh Human Rights Commission at Bhopal on 02.9.2006, the Hon'ble Justice Y.K.Sabharwal (since retired) brought out the purpose behind the creation of Human Rights Commission. It is useful to quote the following passage from the speech delivered by him.

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"Human rights movement in the free world reached a landmark when UN General Assembly adopted a resolution, in December 1993, to endorse "Paris Principals of 1991" that mooted the idea of establishing institutions designed to provide "guidance and directions" for affording "better protection of human rights". In the wake of these developments India, committed to "respect for international law and treaty obligations in the dealings of organised people with one another", enacted the Protection of Human Rights Act, 1993, with a view to bring about greater accountability and strengthen the dominion of human rights in the country.

....

.....

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.....In view of the fact that guarantee of basic human rights lies at the core of true democracy, it is imperative that India leads by example in enforcement of human rights. It being part of the constitutional obligation of our democracy, the objective of ushering in good governance that cherished and zealously guarded human rights is sought to be achieved by establishment of human rights apparatus under the Protection of Human Rights Act."

[See for full Text - 2007 (1) SCC J-1 (Journal Section]

11. The Supreme Court in its decision reported in (1996) 1 SCC 742 [National Human Rights Commission vs. State of Arunachal Pradesh and another] emphasised the duty of the State in protecting the life and liberty of human being. The following passage found in paragraph 20 is usefully quoted:

"Para 20: We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise."

12. As to the competency of granting compensation for any human right violation by Courts, the Supreme Court had in more than one occasion dealt with the said issue. The Supreme Court in its decision reported in (1993) 2 SCC 746 [Nilabati Behera vs. State of Orissa] held that the Award of compensation in a proceeding under Article 32 by the Supreme Court or under Article 226 by the High Court is a remedy available in public law based on strict liability for contravention of fundamental rights. It is held that the defence of sovereign immunity does not apply in such a case even though it may be available as a defence in private law in an action

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based on tort. It is held further that the award of damages by the Supreme Court or the High Court in a writ proceeding is distinct from and in addition to the remedy in private law for damages. It is one mode of enforcing the fundamental rights by this Court or High Court. Reliance is placed upon Article 9(5) of the International Covenant on Civil and Political Rights, 1966 which says, anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

13. The Supreme Court in the decision reported in (1997) 1 SCC 416 [D.K. Basu vs. State of W.B.] held in paragraph 54 as follows:

> "Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty-bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizens, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."

14. Further, the Supreme court in its decision reported in (1997) 3 SCC 433 [People's Union for Civil Liberties vs. Union of India and another] held in paragraph 13 as follows:

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"It is not clear whether our Parliament has approved the action of the Government of India ratifying the said 1966 Covenant. Indeed, it appears that at the time of ratification of the said Covenant in 1979, the Government of India had made a specific reservation to the effect that the Indian legal system does not recognize a right to compensation for victims of unlawful arrest or detention. This reservation has, of course, been held to be of little relevance now in view of the decision in Nilabati Behera and in D.K. Basu.]"

15. Thus, the power of the SHRC to award compensation in case of violation of Human Rights by a state agency is beyond doubt. In fact, on the inability of the Commission to execute its own orders and recommendations, the former Chief Justice has made a passionate plea to the State in this regard in his lecture (cited above) and the relevant passage is extracted below:

"Before I conclude, I must say that no purpose is served by the Commission engaging the other agencies of the State in adversarial litigation to secure enforcement of its recommendations. In this context, I would like to impress upon the State executive that by augmenting the human rights protection machinery in the State, the Government is, in fact, acquiring a partner in good governance. The law casts an obligation on each State Government to sustain the human rights apparatus by acting in its aid rather than at cross-purposes. I hope and trust that the State Government would do all it can to reinforce this partnership for the common good of the people of the State and would abide by the provisions of protection of the Human Rights Act in letter and spirit."

16. In the light of the above, the grievance projected by the writ petitioner has no substance and the writ petition is liable to be dismissed. However, there will be no order as to costs. As the writ petition is dismissed, there is no impediment for the State Government in implementing the order of the SHRC. As the writ petitioner is under the services of the State, we direct the Government to implement the orders of the SHRC and recover the amount from the writ petitioner and pay the same to the husband of the second respondent within a period of eight weeks from the date of receipt of a copy of this order. The State will also consider making the necessary amendments in the Act so as to provide necessary power to execute the orders of the SHRC. A copy of this order will also be marked to the Secretary, Home Department, Government of Tamil

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Nadu, for further actions and compliance of our order. Consequently, connected Miscellaneous Petition will also stand dismissed.

gri

Sd/-
Assistant Registrar

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Sub Assistant Registrar.

To

1. The Chairman
   State Human Rights Commission
   Tamil Naud,Chennai.

2. The Secretary
   Home Department
   Government of Tamil Nadu
   Fort St. George
   Chennai - 600 009

+ One cc to Mr. A. Prabhakaran Advocate SR.No 62334
+ One cc to The Govt Pleader SR 62135.

NTK (co)
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